



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Lake Hartwell Marine Construction Company
File: B-226387
Date: May 18, 1987

DIGEST

1. Protest that agency should have issued an invitation for bids and not have conducted a procurement under negotiation procedures is untimely where not raised until long after the due date for initial proposals, since the use of negotiation was an alleged deficiency that was apparent on the face of the solicitation.
2. Agency's decision to reject protester's proposal, based upon major deficiencies in all technical areas, so that correction would require submission of a virtually new proposal, is not unreasonable or otherwise in violation of applicable statutes or regulations.

DECISION

Lake Hartwell Marine Construction Company protests the award of a contract to R&D Maintenance Services, Inc. under request for proposals (RFP) No. DACW21-87-R-0016, issued on November 25, 1986 by the U.S. Army Corps of Engineers, Savannah, Georgia. Hartwell argues that an award on the basis of initial proposals, i.e., without discussions, was improper and that its own proposal was improperly evaluated. The protester also contends that the cancellation of a prior invitation for bids (IFB) for this work and the soliciting of competitive proposals was improper.

We dismiss the protest in part and deny it in part.

The solicitation called for firm-fixed-price proposals to provide routine cleaning, refuse removal, grass cutting and other maintenance services at Hartwell Lake, Hartwell, Georgia. Proposals were to be evaluated on the following factors in descending order of importance: management capabilities, technical capability, price, and manpower requirements. The solicitation listed specific areas of consideration under each factor. Although not disclosed to prospective offerors, the Corps assigned to the evaluation

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factors a maximum of 29 points, 26 points, 25 points, and 20 points, respectively. The RFP also provided that the government might award a contract on the basis of initial offers received, without discussions, and that each initial offer should contain the offeror's best terms.

Eleven proposals were received by the January 6, 1987 closing date. The composite scores (technical factors and price) ranged from 89.09 (R&D Maintenance) to 9.65, with the protester receiving 46.17, making it the fifth-ranked overall. Hartwell's price was \$564,553.

The contracting officer determined that only the two highest-rated firms had a reasonable chance for award. On January 30, it awarded a \$665,142.97 contract to R&D Maintenance, the lower-priced of the two, on the basis of its initial proposal. Hartwell received a debriefing on February 19 and protested to our Office on February 27.

Hartwell initially complains that by soliciting competitive proposals, the Corps violated the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(2) (Supp. III 1985), which establishes criteria for determining whether agencies should solicit sealed bids or use competitive negotiation procedures. (The agency had previously issued an IFB for the work on August 11, 1986, but canceled it when the only responsive bid was unreasonably priced. Hartwell did not submit a bid in response to that IFB.) We find this basis of protest untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2 (1986), protests based on alleged deficiencies that are apparent on the face of a solicitation must be filed before bid opening or the closing date for receipt of initial proposals. The protester clearly knew that the Corps had decided to use competitive negotiation procedures when it received the RFP, yet Hartwell did not raise the matter until long after the closing date, specifically at an April 8 conference on its protest at our Office. We therefore dismiss this basis of protest.

Hartwell next contends that the Corps violated the CICA provision prohibiting agencies from accepting an initial proposal that is not the lowest priced, considering only cost and cost-related factors listed in the RFP, where there would be at least one lower-priced proposal within the competitive range. See 10 U.S.C. § 2305(b)(4)(A)(ii); Aviation Contractor Employees, Inc., B-225964, Mar. 30, 1987, 87-1 CPD ¶ 363. Since, as discussed below, we find that the Corps reasonably determined that Hartwell's proposal had no reasonable chance for award, this contention is without merit.

In reviewing complaints about the reasonableness of the evaluation of a technical proposal, our function is not to reevaluate the proposal and to make our own determination about its merits. That determination is the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. Procuring officials have a reasonable degree of discretion in evaluating proposals, and we determine only whether the evaluation was unreasonable or otherwise in violation of procurement laws or regulations. Pharmaceutical Systems, Inc., B-221847, May 19, 1986, 86-1 CPD ¶ 469.

In this case, the protester's proposal received 8.75 points out of 29 for management capabilities, 9 out of 26 for technical capability, 18.67 out of 25 for cost, and 9.75 out of 20 for manpower requirements. Virtually all of the points assigned for management capabilities related to Hartwell's quality control plan and list of proposed management staff. The proposal did not address any other areas described in the RFP as relevant to this factor. For example, it did not include a management plan with operating policies and procedures, a plan to administer payrolls and labor relations functions, or an outline indicating an understanding of requirements of the job and anticipated problems and solutions. Under the technical capability factor, Hartwell's supervising personnel scored relatively high, but the firm lacked experience in similar work or in performing government contracts. The firm's low score under manpower requirements stemmed largely from a failure to provide a required statement setting forth manpower requirements for each phase of work.

The protester characterizes the deficiencies identified in its proposal as "minor informational deficiencies." We disagree. We have reviewed the proposal and evaluation record and conclude that the deficiencies relate to a lack of understanding of requirements to perform the work satisfactorily, a lack of diligence in preparing the proposal, or a lack of corporate capabilities that, in total, would require virtually an entirely new proposal to correct.

Agencies are not required to permit an offeror to revise an unacceptable initial proposal where deficiencies are so material that major revisions are required to make the proposal acceptable. ASEA, Inc., B-216886, Feb. 27, 1985, 85-1 CPD ¶ 247. Here, Hartwell's proposal contains substantial deficiencies in all areas except price, and it would require submission of virtually a new proposal to have a

reasonable chance for an award. Consequently, we find reasonable the Corps' judgment that discussions would not be conducted with the protester.

We dismiss the protest in part and deny it in part.

for Signature
Harry R. Van Cleve
General Counsel